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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/635,249

08/06/2003

Donald C. Roe

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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

07/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/635,249	Applicant(s) ROE ET AL.	
	Examiner MICHAEL G. BOGART	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14 and 16-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 and 16 is/are allowed.
- 6) ☒ Claim(s) 17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

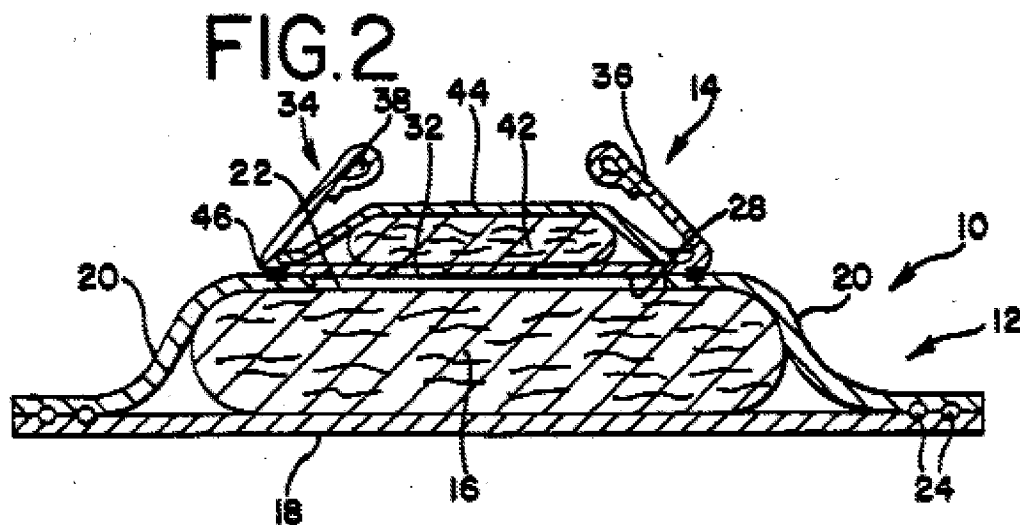
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

1. Claims 17, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zajackowski (US 5,236,428 A) in view of Brunner *et al.* (US 5,681,298 A; hereinafter “Brunner”)

Regarding claim 17, Zajackowski teaches a disposable diaper (10) having a longitudinal axis, a first waist region, a second waist region, and a crotch region interposed therebetween, the disposable diaper (10) comprising:

a backsheet (18); a topsheet (20) joined to the backsheet (18); an absorbent core (16) disposed intermediate the backsheet (18) and the topsheet (20); and

a auxiliary absorbent element (14) disposed on the topsheet (20) along the longitudinal axis, the auxiliary absorbent element (14) includes a permeable layer (44) having a body facing surface, a absorbent substance (42) disposed on the permeable layer (44), and an impermeable layer (28) partially wrapped around the permeable layer (44) such that longitudinal edges (36) of the impermeable layer (28) stop short of meeting, leaving a center portion of the body facing surface of the permeable layer (44) exposed (see figure 2, infra).



Zajackowski does not disclose that the absorbent substance has a negative heat of solution (is endothermic) and is responsive to contact with urine to absorb heat.

Brunner teaches a diaper (20) that has a urine-sensitive endothermic temperature change member (22) located immediately under a topsheet (58)(col. 5, line 23-col. 6, line 56). This element causes a cooling sensation to indicate to a wearer of the article that urination has occurred.

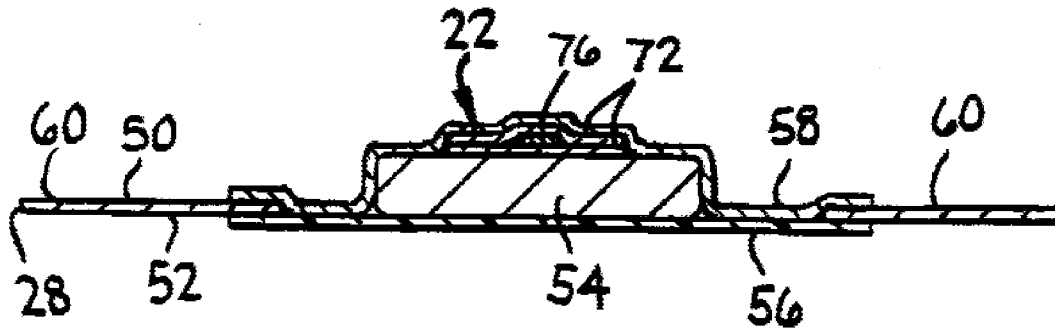


FIG. 2

At the time of the invention, it would have been obvious for one of ordinary skill in the art to place the temperature change member of Brunner under the topsheet of the diaper of Zajackowski in order to provide a means of alerting a wearer of the device that urination has occurred. In this combination, Zajackowski's auxiliary absorbent element combined (14) with Brunner's temperature change member (22) is construed as a temperature change element.

Furthermore, where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. § 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007)(citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent persuasive evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. § 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007)(citing *KSR*,

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127 S.Ct. at 1740, 82 USPQ2d at 1396). Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. § 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Regarding claim 19, Zajackowski teaches a disposable diaper (10) having a longitudinal axis, a first waist region, a second waist region, and a crotch region interposed therebetween, the disposable diaper (10) comprising:

a backsheet (18) ; a topsheet (20) joined to the backsheet (18);

an absorbent core (16) disposed intermediate the backsheet (18) and the topsheet (20) and impermeable barrier leg cuffs (28, 36) disposed on the topsheet (20) parallel to the longitudinal axis and auxiliary absorbent elements (44, 142, 143) disposed on the barrier leg cuffs (28, 36), each of the auxiliary absorbent elements (44, 142, 143) includes a permeable layer (44) having a body-faceable surface, an impermeable layer (28) formed by the barrier leg cuff (28, 36).

Further regarding claim 19, Brunner teaches a temperature change substance (84) disposed on a permeable layer (72).

Regarding claim 20, Zajackowski teaches an auxiliary absorbent element (42) disposed between the permeable layer (44) and the leg barrier cuff (28, 36)(see figure 2, supra). Brunner teaches that the temperature element may be located under an permeable element (58).

Allowable Subject Matter

2. Claims 12-14 and 16 are allowed.
3. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments, see Remarks, filed 28 March 2008, with respect to claim 18 have been fully considered and are persuasive. The rejection of claim 18 has been withdrawn.
5. Regarding claims 17, 19 and 20, applicant's arguments filed 28 March 2008 have been fully considered but they are not persuasive.

Regarding claim 17, applicants assert that Zajaczkowski discloses that lower surface (28) permeable. This argument is not persuasive because Zajaczkowski teaches that the bottom layer (28, 128) of the secondary absorbent member (14, 114) is impermeable. Liquid will not permeate the material structure that forms the layer itself, it can only travel through cutouts or other areas where there is a void (32, 130) or absence of the layer itself to the primary absorbent assembly. While surface (28, 128) has permeable regions where these cut outs exist, the rest of the surface (28, 128), for example, areas between the cutouts, the layer is impermeable (col. 3, lines 58-68).

Regarding claims 19 and 20, applicants assert that Zajaczkowski reference numbers 28 and 36 (applicants recite element 30 at page 8, second to last line, but reference 36 was used in the previous Office action) are not leg barrier cuffs. This argument is not persuasive because

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reference numbers (28) and (36) refer to a single impermeable sheet of material that forms the leg gathers (34) and elements (28) and (36) can together be reasonably construed as forming leg cuffs. Applicants further assert that absorbent elements (42, 142, 143) are disposed beneath the topsheet (44). This argument is not persuasive because as applied in the detailed rejection of claim 19, reference number (20) is construed as the topsheet, not element (44)(construed as the permeable layer of the secondary absorbent structure (14)). The barriers (28, 34, 36) are disposed on top of the topsheet (20) while the secondary absorbent members (42, 142, 143) are disposed on top of the layer (28, 36) that forms the barriers (34) and below the permeable layer (44) of the secondary absorbent structure (14)(see fig. 2, supra).

Applicants assert that there is no reason provided to combine the structures of the cited references. This argument is not persuasive because Zajackowski discloses a diaper-like absorbent article with secondary absorbent structures and leg barriers that aid in transferring liquids to the primary absorbent member and preventing overflow of liquid from the article. Brunner discloses a diaper-like absorbent article that serves two purposes, liquid collection and giving a wetness/warming sensation to a wearer of the device. Brunner uses a temperature change structure located beneath the topmost wearer-facing sheet to provide this wetness sensation. Adding the wetness sensation element of Brunner to the garment facing surface of the topmost layer of Zajackowski would provide for use of that device as a training pant with good overflow prevention properties.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. BOGART whose telephone number is (571)272-4933. The examiner can normally be reached on M-F, 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Bogart/

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761